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March 24, 2005

SETTLEMENT CONFIDENTIAL

By Hand Delivery and First Class Mail

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Assistant Regional Counsel
EPA Region 10
1200 Sixth Avenue
Seattle WA 98101

Re: Container Properties LLC
EPA's 2/15/05 Demand for Stipulated Penalties

Dear Jennifer:

This letter follows up my March 18 letter with the additional documentation I promised in support of Container's responses to each of the allegations in EPA's Demand before our March 31, 2005 meeting. Our March 18 missive addressed the PLC and data recorder and the purpose and function of that equipment. Significantly, the data recorder could not record compliance data until after EPA had approved the locations of the two transducers from which the water level data could be established per the Work Plan. You now have all that data which demonstrate that the PLC and data recorder system has functioned as designed and in compliance with the Approved Work Plan. The remainder of this letter addresses EPA's remaining allegations

EPA Allegation 1: Failure to construct the approved groundwater treatment system

Container Response: Container Properties does not agree with EPA's interpretation of the described events or actions giving rise to this allegation.

No modification of the IM Construction Work Plan has been requested or approved by EPA. It is also agreed that the present groundwater pretreatment system does not exactly conform to the Work Plan. However, the treatment system functions as designed and specified in the IM Construction Work Plan, but can handle the much larger groundwater flows than were originally anticipated. In addition, the groundwater pretreatment system initially installed as described in the September 12, 2004 Hydraulic Control Interim Measures Implementation Report

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did include all the elements described in the Work Plan. All items specified, including the surge tank, booster pump, nitrogen blanket, and auto dialer were installed as specified in the Work Plan and as certified in the Implementation Report. This was further documented in the Operation, Monitoring, Inspection, and Maintenance Plan (OMIMP) submitted to EPA on April 5, 2004.[1] As verbally reported to EPA's Christie Brown in December 2003, it was necessary as a result of record precipitation to increase the treatment capacity of the groundwater pretreatment system in order to maintain the inward hydraulic gradient specified in the Work Plan.

During the months from October 2003 through December 2003, the Seattle area received over 18 inches of rain, far above the normal rainfall for this time. Included in this unusually wet period was the single largest 24-hour storm event ever recorded in the City of Seattle, 5.02 inches on October 20, 2003 (see attached Seattle Times article, November 2, 2003).[2] The October rain event flooded and destroyed the electrical controls of the local sewer lift station used to transfer the pretreatment system discharge to the sanitary sewer. In addition, the heavy precipitation caused a considerable amount of water to accumulate on-site, leading to higher than expected infiltration into the barrier wall area subsurface, increasing the volume of water that had to be pumped to meet the inward gradient performance standard.

The pumping and pretreatment system went through initial system start-up operations during the summer months and for the first few months ran well, but the difficult wet period encountered in the fall pointed out changes that needed to be made to the system in order to attain hydraulic control objectives. The changes that needed to be made were within the overall objectives and intent of the original design – the unit operations specified and approved in the Work Plan have been maintained in the expanded pretreatment system, but the hydraulic capacity of the system operations was increased. In terms of function and design, the groundwater pretreatment system inspected by EPA on August 18, 2004 was substantially the same as that specified in the Work Plan, except that the original surge tank had been removed, larger filters and larger carbon adsorption beds had been installed, and the capability to pump purge water from monitoring wells through the system for treatment was added.

[1] See Exhibit 24-A (front cover of OMIMP)

[2] See Exhibit 16 (Seattle Times Article)

1(a) Alleged failure to install surge tank and nitrogen blank

EPA indicates particular concern regarding "failure to install the surge tank and nitrogen blanket." As noted above, the surge tank, booster pump, and nitrogen blanket had been installed during the summer of 2003; they were simply removed prior to August 2004.[3] The only purpose for including the surge tank/booster pump/nitrogen blanket system in the original design was to allow operation of booster pumps to ensure that adequate flow could be maintained. The original conceptual groundwater model indicated pumping rates would be on the order of 3 gallons per minute (gpm); however, actual groundwater pumping rates required to deal with the unusual rainfall were much higher than expected. With the originally anticipated low flow rates, it was unknown whether or not the pumping rates would provide sufficient pressure to maintain flow through the GAC units. In the original design, extra pumping capability was conservatively included to ensure maintenance sufficient flow. A booster pump was added to the system immediately in front of the pretreatment filter unit to boost pressure. The surge tank was designed into the system only to provide a reservoir for the booster pump to increase pressure and maintain flow through the filter, GAC units and the discharge line. The nitrogen blanket was designed into the system to minimize the potential for oxidation of the groundwater in the surge tank. Oxidation would result in precipitation of iron and other minerals into the surge tank which would result in the need for excessive maintenance and reduced system reliability. The surge tank, booster pump and nitrogen blanket were all designed into the system as a contingency; however, also included in the original design was piping to bypass the surge tank, booster pump and nitrogen blanket if it was found the well pumps were adequate to maintain required flows without using the booster pump. In short, the surge tank, booster pump, and nitrogen blanket became unnecessary impediments to system control when the actual flow rates were established in the wet fall of 2003.

During initial operations of the pretreatment system, it was determined that the booster pump was unnecessary and that the well pumps provided sufficient flow capacity to maintain the design flow rate. The surge tank, booster pump, and nitrogen blanket were bypassed using the bypass line included in the approved design. In the OMIMP submitted to EPA in April 2004, it is clearly stated that the surge tank and booster pump were being bypassed[4]. In upgrading the capability of the groundwater pretreatment system, the surge tank and nitrogen blanket were clearly not necessary and therefore removed, resulting in improved reliability and increased treatment capacity. It is unclear why removal of the surge tank would create particular concern,

[3]See Exhibit 25; the surge tank, booster pump, and nitrogen blanket were removed prior to King County inspection on June 15, 2004.

[4]See Exhibit 24-B for text referencing the bypassing of the surge tank and booster pump.

since the pretreatment system has consistently met all performance requirements established by King County and has operated reliably without the surge tank/booster pump.

1(b) Alleged failure to install autodialer

EPA also alleges "failure to install an auto-dialer which would alert off-site personnel in the case of an alarm." An auto-dialer meeting the requirements of the approved specifications was installed in July 2003. However, even though significant effort has been expended to activate the auto-dialer, it has not been functional. Container Properties has increased the level of operator attention for the system due to the inability to enable remote alarm. The effectiveness of the Container Properties' approach to system operation has been demonstrated by maintenance of the inward hydraulic gradient specified in the Work Plan for approximately one year of operation and by continuously meeting all permit requirements established by King County.

1(c) Alleged open-top unit for management of investigation derived wastes

The "open-top unit for management of investigation-derived RCRA-listed hazardous wastes containing volatile constituents" was added to the system to allow treatment and discharge of purge water generated during groundwater monitoring events. The open top is necessary to allow purge water to be poured into the tank. When the purge water is in the tank, the pumps are manually activated to pump the groundwater through the pretreatment system. From a waste classification perspective, the purge water is no different from groundwater normally recovered in the extraction wells. This modification to the pretreatment system does not affect operation or performance of the interim measure; it was merely implemented to facilitate sampling and timely management of groundwater recovered from monitoring wells. Design and operation of the open-top tank will be described in an amendment to the Work Plan.

1(d) Alleged failure to construct the approved groundwater extraction and treatment system by June 2, 2003

EPA indicates that construction of the groundwater extraction and treatment system was to have been completed by June 2, 2003, and that the Respondents failed to construct the approved system. Container Properties disagrees that the groundwater pretreatment system that was originally constructed (but that was not inspected by EPA at the time) did not meet the requirements of the IM Construction Work Plan. The original pretreatment system was constructed as designed and as specified in the Work Plan, as outlined in the Construction Implementation Report. The system inspected by EPA in August 2004 had been modified to increase the hydraulic capacity of system, but is the same process as was originally presented in the Work Plan. The hydraulic capacity of the treatment system was increased to hasten

attainment of the hydraulic control objective but without changing the process. The process followed to increase the treatment capacity and to attain the performance standard allowed the process to be completed in a much shorter time frame than typical. Construction of the groundwater pretreatment system was completed and inspected by King County on July 28, 2003.[5] The completion date for the pretreatment system and other tasks is discussed in detail in the response to Item 2, below.

As Container is in compliance with the "basic" design outlined in the HCIMCWP, the changes made to the system were done to hasten attainment of IM objectives, and since the performance of the pumping and treatment system has proven reliable and effective, Container Properties contests that any penalties should be assessed.

EPA Allegation 2: Failure to install the approved transducer and data recorder

Container Response: Container Properties takes exception to this alleged violation.

EPA states that "the approved transducer[s] and data recorder were never installed . . ." This is not true. The specifications for the transducers are contained in the approved IMCWP in Specification 16910, Section 2.01 "General – Transmitters."[6] The specifications set forth in Section 2.01 apply to all instrument transmitters used in the control system, including the pressure transducers in the selected control wells. The transducers installed in the selected control wells are In-Situ PXD 261, 30 psi, 4-20 mA, and vented 316 stainless steel pressure transducers. These transducers meet the specifications set forth in the approved IMCWP (see attached transducer specification from IMCWP). There are no other specifications for the transducers in the approved work plans. As discussed in the timeline presented in Table 1, these approved transducers were installed in the selected control wells prior to January 6, 2004.[7] Therefore, it is not factually correct to state that the approved transducers were never installed. Transducers fully meeting approved specifications were installed by January 6, 2004 in less than 30 days after EPA approved their placement on December 11, 2003. It should be noted that this proposed location plan had been submitted to EPA in September 2003.

2(a) Approved data recorder never installed

A data recorder meeting all approved plans and specifications was installed at the facility in July 2003. The specifications for the data recorder are included in the approved IMCWP in

[5] See Exhibit 12.

[6] See Exhibit 26.

[7] See Exhibit 23.

Appendix A, Specification 16900, page 16900-9 (attached).[8] These specifications state that the data recorder shall be a TrendView Minitrend V5 with 4 input channels or equal. The specifications included in the approved IMCWP are based on this Honeywell data recorder. A Honeywell TrendView MiniTrend V5 data recorder with 4 input channels meeting the approved specifications was installed in July 2003 along with other components of the groundwater pretreatment system (see submittal from Betschart Electrical of the specifications for the IM electrical equipment for Honeywell Trendview MiniTrend V5 data recorder).[9]

2(b) Alleged non-compliant transducer(s) installed on February 13, 2004

It is also stated that: "a non-compliant transducer[s] was installed on February 13, 2004." This statement is also factually incorrect since the approved transducers were timely installed by January 6, 2004, and no changes have been made to the transducers since their installation.[10] The transducers were installed less than one month after the selection of the control wells was approved by EPA on December 11, 2003. Based on the process established in the approved work plans, the transducers could not be installed prior to receiving approval of the control wells from EPA. The installation of the transducers also involved connecting the transducer cable to the PLC; installing the programming for the PLC; calibrating the transducers, and verifying that the programming and data recording function properly.[11] According to the operational schedule provided in the approved PMP which indicates that this work would require two months to complete, installation of the approved transducers was completed well within the two-month period allowed (See Table 1 for details on this timeline). The installed transducers fully conform to the specifications identified in the approved IM Construction Work Plan and were installed within the time frame specified in the approved work plans.

2(c) Schedule for transducer installation

Under the process specified in the approved IM Construction Work Plan and the Interim Measures Performance Monitoring Plan (PMP), the barrier wall was to be installed and allowed to cure, followed by a 30-day water level monitoring program during which groundwater could not be pumped. The water level data were to be evaluated and reported to EPA along with a recommendation for two groundwater level control wells to be used for establishing compliance with the hydraulic gradient performance criterion. Upon completing the water level monitoring

[8] See Exhibit 27.

[9] See Exhibit 28.

[10] See Exhibit 29.

[11] See Exhibit 22-B.

program, it was necessary to evaluate the results, select and recommend two water level control wells, prepare a report, and submit the report and recommendations to EPA for approval [12] The Barrier Wall Evaluation Report accomplishing these requirements was submitted on September 12, 2003; EPA did not approve the Barrier Wall Evaluation Report as submitted until December 11, 2003. This EPA approval finalized which of the control wells were to be fitted with pressure transducers. The transducers were installed and operational on January 8, 2004 as necessary to commence water level monitoring and automatic water level control. The groundwater extraction and pretreatment system was started in August 2003, prior to installation of the transducers, so that Container could begin removing groundwater, perform start-up testing and adjusting and actively work towards complying with other work plan requirements without delay. The extraction and pretreatment system was operated continuously during this time except for occasional shutdown periods, with operations monitored by the PLC. Under this approved sequence of events, no water level data were being generated during initial operation of the pretreatment system (since EPA had not given approval of the wells for installation of the transducers at this point in the approved process), and it was not necessary to operate the fully compliant data recorder that had been installed. As planned and approved by EPA, flow data were not being recorded with the data recorder; data required for reporting to King County were obtained by manually reading the totalizer on the discharge flow meter. Upon installation of the transducers in January 2004, after receiving EPA approval of the selected control wells, it was determined that the installed, fully compliant data recorder could not be made to function correctly. A replacement data recorder, identical to the originally installed data recorder and fully meeting all approved plans and specifications, was then installed and placed in operation on February 13, 2004. Both the initial and replacement data recorders are fully compliant with the approved Work Plan and other documents.

Container Properties contests these stipulated penalties. The transducers and the data recorders, which fully meet all approved specifications and plans, were installed in accordance with the approved Work Plans.

EPA Allegation 4: Failure to submit progress reports

Container Response: Container Properties takes exception to this alleged violation. The period from October 2003 through February 2004 was a very difficult period operationally for the new pumping and treatment system. The system had been started up in the summer and went through initial start-up shake down during the dry period; however, on October 20th through October 21st, 2003, Seattle received 5.02 inches of rainfall in a 24 hour period which was the

[12] See Exhibits 1-B, 9, 11, 15, and 19 for information regarding the selection and approval of control wells.

largest one day storm event ever recorded in the City of Seattle (Seattle Times, Sunday November 02, 2003) The result of the rainfall event was that the local sewer lift station was flooded and the electrical components of the lift station were ruined. Due to these events, Container Properties was forced to shut down the pump and treatment system on October 23, 2003, as there was no mechanism to discharge the pretreated water. Container Properties rebuilt the lift station as quickly as possible in order to allow the pumping and treatment system to be put back into operation. Christy Brown, the EPA site coordinator, was notified by telephone of the situation on October 23, 2004 and was notified weekly of progress during the reconstruction period. RCI, the treatment system operator, was committed to getting the project on track even during this period of exceptional weather. They committed extensive resources to rebuilding the lift station. The lift station is part of pre-existing site facilities (and is not part of the interim measure) although the responsibility of maintenance of the lift station falls to the property owner.

Since that period, notices of shutdowns have been transmitted to EPA in the monthly monitoring reports including a discussion of repairs and actions completed to address the shutdowns. This was consistent with the intent of the work plans and approvals, and in full compliance with the Order. If EPA had concerns about the manner or document in which the reporting of system shutdowns occurred this could have been easily communicated to Container Properties, RCI, the system operator, or Geomatrix who would have been happy to change the reporting approach to meet EPA's request. In the future Container will combine the submittal of the progress report and monthly monitoring report to avoid any confusion.

In addition, Container Properties viewed the period from August 2003 through February 2004 as the commissioning period for the treatment system (see response to Violation 2). The IMCWP discussed the start-up period and laid out the program following completion of the barrier wall construction All construction activities were completed by early summer 2003; however, typical of any remediation system, there is a start-up period necessary to get the system up and running reliably. During any typical treatment system commissioning or start-up, equipment failures are expected and adjustments will be required. Container did not view such adjustments and shutdowns as notable events requiring inclusion in the progress report. They were simply normal start-up problems expected with a new system. For example, during this period the original data recorder was continuing to malfunction and after an inability to successfully trouble shoot the problems, the manufacturer was notified and the faulty data recorder replaced (at no cost) with a new unit of the same model.

As discussed in the objection to Violation 2, the completion of the start-up period was defined by the installation of the transducers after receiving EPA approval for the two control wells. EPA approval for the control wells was not obtained until December 11, 2003 and the transducers were installed in early January. During this period, there were regular and frequent communications with the EPA as Container and its consultants were working extremely hard to

solve the various startup problems encountered in addition to battling highly unusual and difficult weather conditions. Fines should not be assessed under these circumstances.

EPA Allegation 5: Failure to timely submit O&M Plan

Container Response: Container Properties objects to the violation and associated fines for failure to submit an Operation and Maintenance Plan (O&M plan) by October 3, 2003, 60 days after completion of the commissioning of the extraction and pretreatment system. The pretreatment system was started up on August 4, 2003 as EPA indicated in the February 15, 2005 letter; however, commissioning of the extraction and pretreatment system was not completed on that date. On all treatment system start-ups, troubleshooting and adjustments are conducted with the system in operation. This is commonly referred to as the "Start-up period". System start-up can take from three to 12 months to complete depending on the system complexity and the problems encountered. For this site RCI operated the pump and treatment system through August and September with minimal downtime. The PLC and data recorder could not be placed in full operation at this time because the control wells had not been selected for approval by EPA and, therefore, the transducers could not be installed. The groundwater extraction and pretreatment system was not complete until the transducers were installed, commissioned, and placed into full operation. Consistent with the overall schedule and process presented in the approved work plans, Geomatrix submitted the Barrier Wall Evaluation Report to EPA on September 12, 2003. This report proposed two wells, MW 49 on the inside of the barrier wall and DM-8 on the outside of the barrier wall to be used as the control wells for determining compliance with the one foot differential and an inward gradient. EPA approved the selection of these two control wells approximately three months later in a letter sent on December 11, 2003.

Until receiving approval of the control wells from EPA, Container Properties could not install the pressure transducers in the wells, commission the transducers, calibrate the transducers, test the data recorder, or complete installation and testing of the programming for the PLC. As a result, the period cited by EPA for submittal of the O&M Plan was clearly part of the commissioning period for the system, and, therefore, the O&M Plan could not be completed. Given receipt of the EPA approval of the control wells during the holiday period, Container Properties could not reasonably install, test, calibrate, and commission the transducers and complete PLC programming until January 2004. However, although all equipment had been installed by early January, installation of the transducers allowed startup and testing of the data recorder, which was the first time the data recorder had been placed into operation to record groundwater level data, it was discovered that it was not functional and had to be replaced, delaying the date for full system functionality until February 13, 2004. This date represents the startup date for the complete groundwater recovery and pretreatment system. Using the February 13, 2004 date as completion of the commissioning and startup would result in the

O&M Plan being due on April 14, 2004. Since the O&M Plan was submitted April 1, 2004, Container Properties was in full compliance and not in violation.

In addition to the equipment issues identified above, in October 2003 a record rainfall event (5.02 inches within a 24-hour period) shut the lift station down for several weeks, forcing shutdown of equipment and interruption of start-up troubleshooting. Trouble shooting of the system was completed in February with the replacement of the faulty data recorder on February 13, 2004. During this same period, it was also apparent that the performance standard for the inward gradient could not be met with the originally designed pumping and treatment rates. Therefore, work commenced to increase the hydraulic capacity and improve the reliability of the groundwater recovery and pretreatment system. This is exactly the type of troubleshooting and improvements anticipated during a start-up period. Preparation of an O&M plan could not have been completed until the various parts of the pumping and treatment system start-up shake down could be completed. Since this process was completed in February of 2004, submittal of the O&M plan on April 1, 2004 was well within the 60-day period.

Container Properties was in compliance with the Order for the submittal of the O&M Plan and the cited penalties should not be assessed.

EPA Allegation 6: Failure to maintain operating records

Container Response: Container Properties disagrees with this violation and associated penalty. The period from August 2003 to early February was part of the commissioning or start-up testing period for the extraction and pretreatment system. EPA is incorrectly interpreting commissioning and startup as the day groundwater discharge commenced under the King County permit; however, commissioning a treatment system typically takes three to 12 months to complete. EPA understood this at the time especially given that it did not address the critical component of the transducers until December 2003. Field staff were on-site almost continuously during this period monitoring and adjusting the process, maintaining the bag filter system, modifying the PLC programming, adjusting flow rates, evaluating the effectiveness of the design, and learning the nuances of the system. This period of time was a major part of the process in developing the appropriate structure and level of effort for the O&M plan. For example, the originally specified bag filter was requiring daily maintenance; therefore plans were made to increase the size of the filters as a needed improvement to the system. This equipment change does not change the process used to treat the groundwater. Implementation of this equipment change has greatly reduced the maintenance and operation needs. As noted above in objection to Violation 5, the extraction and pretreatment system was not commissioned and placed into normal operation until February 2004. Records and logs for normal operation could not be prepared and maintained until February 2004.

This sequence of events is completely consistent with the standards of practice for start-up for treatment systems. For this reason, Container Properties was not out of compliance during the period of August 2003 to April 2004. From April 2004 through to the present, RCI has been completing the necessary inspections and performing the appropriate record keeping per the O&M plan

EPA Allegation 7: Failure to timely submit discharge reports

Container Response: Container Properties disagrees with this violation and associated penalties.

The period of time from July 2003 to February 2004 was during the pump and treatment system start-up period and, therefore does not fall under the system operation and maintenance requirements. EPA's Project Coordinator, Christy Brown, verbally requested the reports be submitted to EPA in March of 2004. Container Properties immediately complied with this verbal request. Container Properties has attempted to meet all of EPA's requests and needs during this project and on-going formal and in-formal communications have been a critical part of meeting not only the requirements of the Order but also, matters of technical interest to EPA that fall outside the Order. The responses to EPA requests have always been met. When asked, there was no hesitation in supplying EPA with the information. There has been no intent to withhold any reports and in fact EPA has all the reports which show permit compliance.

EPA Allegation 8: Failure to maintain site security/inspection log

Container Response: Container Properties takes exception to both the nature and the magnitude of this violation. Container Properties has maintained adequate site security meeting the intent of the approved IM Work Plan throughout interim measure construction and subsequent to construction throughout the operations and maintenance phase of the project.

Response Summary

The objectives of the IM site security requirements are to ensure that the IM as constructed is secure from inadvertent or intentional damage by third parties that may compromise the IM and/or result in exposure or impacts to human health and the environment. Furthermore, adequate site security must include taking the necessary steps to ensure that inadvertent access by the general public does not occur in areas at the site where the approved IM could be inadvertently compromised or where the general public could be unknowingly exposed to site contaminants. Container Properties has been committed to and has successfully met these goals of site security. In its allegations, the EPA has focused solely on the fencing at the site without taking into consideration other more effective security measures in place.

Container Properties has located and maintained the groundwater pretreatment system inside an onsite building that has remained locked with appropriate signage to prevent unauthorized access. The balance of the approved IM that falls outside the secured building is subsurface and inaccessible to anyone who might enter the site. The power supply for the approved IM was originally the Seattle City Light Substation that was fenced and locked. Container Properties is not aware of any exposed contaminated media (soil, debris, water) present at the site's surface and no potential for human exposure exists for non-intrusive activities at the site. In other words, because surface contamination is not an issue, there is not a need to maintain a secure site perimeter fence to prevent inadvertent human exposure. Through the use of the existing site perimeter fence, interior temporary fence and signage (although the fencing has not been continuously intact), Container Properties has maintained signage and fencing in accordance with the approved IM work plan to deter access to the site. Based on the above, clearly Container Properties has made a reasonable and responsible effort to maintain site security to support the approved IM. Clearly a penalty of $175,500 is not warranted. Despite these reasonable security measures, Container has repaired the fence so that there is no doubt whatsoever regarding site security.

Container's Detailed Response

Container Properties agrees with EPA's assertion that the approved IM Work Plan specifies that the site security system, which consists of fencing and signage clearly identifying the site and restricting access, will be maintained to provide site security and that the fence will be inspected quarterly to ensure that it is in good repair, and that signage is present and legible.

EPA's citation for failure to maintain site security and inspection log (and the associated penalties) are based on the premise that; 1) security for the protection of the IM is exclusively fencing and signage and; 2) Container properties was required by the EPA approved plans to document inspections of site security measures and the associated maintenance thereof.

Container Properties faces the challenge of maintaining site security at an unoccupied industrial property. In other words, at an unoccupied site such as this, if a party wants to gain access to the site, no conventional industrial fencing will preclude this access. Because of the lack of presence at the site, Container Properties has taken a graded approach to site security. Maintaining this security has been achieved by a combination of an exterior permanent perimeter fence, a combination of exterior permanent and interior temporary fence and by physically locking building's and enclosures within the site that house components of the IM groundwater treatment system. Because of this graded approach to security, the perimeter fence at the site that is addressed in the approved IM Work Plan has been maintained in accordance with its function as the outermost boundary of site security with additional more robust security features supplementing it. Although Container Properties at times has not maintained a continuous

perimeter fence, when taking into consideration other security features maintained at the site, with regard to the fencing, the requirement for "restricting access" put forth in the approved IM Work Plan has been met.

EPA is correct that page 6-3 (Section 6.1.2) of the approved IM work plan[13] states that the Respondents will log each inspection in the treatment plant log book and record maintenance needs and final action taken for maintenance requests. However, EPA has incorrectly extrapolated this language in the approved IM work plan to include the site security features. In fact, the section of the approved IM work plan that EPA is basing its position on, reads:

> "General inspection and maintenance of the groundwater treatment system will initially be performed during the scheduled site visits. Piping, fittings, and valves will be inspected for leaks, cracks, damage, and obstructions. Centrifugal pumps will be checked for proper operation and maintained in accordance with manufacturer's instructions. Treatment equipment will be inspected for defects, signs of wear, damage, or over-pressure. Each inspection will be logged in the treatment plant log book. Maintenance needs will be recorded in the logbook. The final action taken for maintenance requests will be noted in the logbook."

The approved IM work plan does not require that Container Properties maintain an inspection log for site security measures nor does it require that Container Properties record maintenance needs and final actions pertaining to site security. Clearly the requirements of page 6-3 (Section 6.1.2) of the approved IM work plan for maintaining the inspection log and documenting maintenance needs and corrective actions apply only to the groundwater pretreatment system.

EPA is correct in their statement that page 6-6 (Section 6.3.1) of the approved IM Work Plan specifies that the site security system, which consists of fencing and signage clearly identifying the site and restricting access, will be maintained to provide security and that it will be visually inspected quarterly to ensure it is in good repair. Furthermore, EPA is correct in their statement that the page 6-5 (Section 6.3) states that any failures of the site security system will be repaired or addressed in a timely manner. Container Properties has met these specifications.

Contrary to EPA's assertions, Container Properties has performed the quarterly inspections of the site security system as required by the approved IM Work Plan. In fact Container Properties has performed inspections of the site security systems much more frequently than on a quarterly basis. As previously stated, Container Properties was not required

[13] See Exhibit 33.

to document these inspections or any maintenance activities that may have resulted. In reality, Container Properties has gone to significant expense to maintain temporary fencing at the site to deter access The physical nature of temporary fence makes it vulnerable to blowing down during high wind events. Container Properties repeatedly repaired the temporary fence at the site subsequent to such wind events.

It is Container Properties opinion that when all other site security measures are taken into consideration, Container Properties has maintained the site fencing to the extent necessary to maintain adequate site security as required by the approved IM Work Plan. For the reasons stated above, Container Properties does not believe that stipulated penalties should be assessed for failure to maintain site security and inspection log

EPA Allegation 9: Failure to Perform Sampling per Work Plan

Container Response: Container Properties denies this alleged violation. All groundwater-monitoring activities have been conducted in accordance with the approved work plan to the extent possible based on field conditions specific to each sampling event.

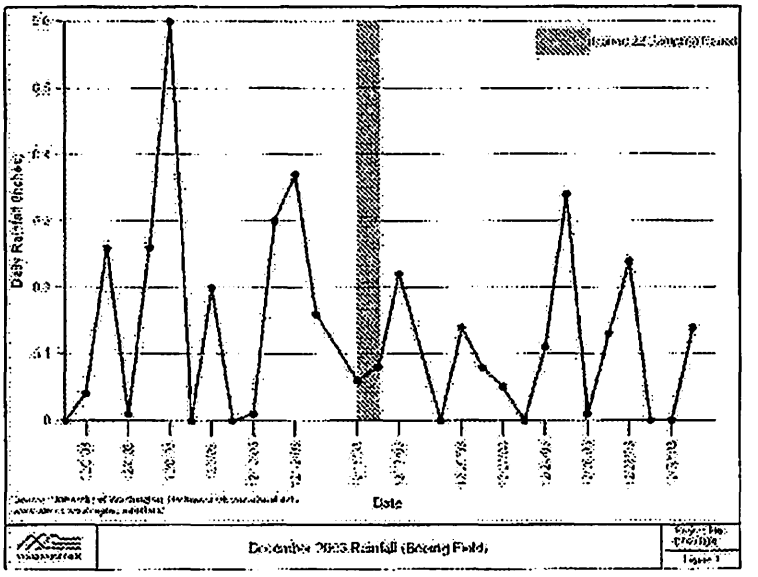
Well EX-3 is an extraction well and is part of the groundwater extraction and pretreatment system. This well has a dedicated pump that normally runs automatically under PLC control The pump discharge is connected to the groundwater pretreatment system, and samples for this well are collected from a sampling port located at the pretreatment system that allows extracted groundwater from EX-3 to be sampled whenever it is being pumped. Well EX-3 is an extraction well with a submersible pump dedicated to groundwater extraction, and the dedicated pump is not designed for sampling. As a result, the low flow sampling procedures specified in the project sampling plans are not feasible at this well. EPA was aware of the limitations of sampling an extraction well at the time the monitoring plan was approved, as there were a number of meetings on this subject. The intent of sampling the Extraction Well is to obtain a general evaluation of the water quality extracted from Well EX-3 to assess temporal changes in the extracted groundwater quality. The nominal 15 gpm pumping rate for the dedicated pump in EX-3 is well above that of low flow conditions. Since operation of this well is under automatic control, it may be run continuously for long periods of time (hours to days at a time), or it may not operate for extended periods. Samples collected from the pump discharged during pumping events could not conceivably be unrepresentative of groundwater in the aquifer due to the high pumping rate and the high level of purging. Low flow sampling methods, including parameter stabilization, are necessary to collect representative water samples while purging these wells at low flow rates. Therefore, parameters were not stabilized at EX-3 prior to sample collection since stabilization of parameters is not required in order to collect a representative groundwater sample at a pumping well. The methods used to sample this well are consistent with professional practice for sampling a pumping well. In addition the data that are

obtained from the EX-3 samples meet the data quality objectives of the sampling program. The methods used for sampling EX-3 have not jeopardized data quality.

Since EX-3 is an extraction well that is part of the groundwater extraction and pretreatment system, it is operated under automatic control. Since it is one of three wells, included in the system controls groundwater levels inside the barrier wall, it may not be running during planned groundwater sampling events. In order to sample this well when the system is off, the PLC would need to be manually over ridden and the EX-3 well pump would have to be manually started. The field staff doing the groundwater sampling are not trained to operate the pretreatment system or the PLC nor should they be expected to make those decisions. Therefore, samples were not collected from EX-3 during Rounds 23 and 24, because well EX-3 was not operating at any time during these two sampling events

This is consistent with the intent of the performance-monitoring program and in full compliance with the well sampling requirements. The influent to the pretreatment system is sampled monthly as required by the King County permit; well EX-3 is frequently running during the monthly sampling events. If EPA had concerns about the manner in which EX-3 was sampled, this could have been easily communicated to Container Properties, RCI, or Geomatrix.

The other two wells cited in the alleged violation for not being sampled during sampling events could not feasibly be sampled during the applicable sampling rounds and, therefore, no penalty is warranted. MW-29 is a flush mount well that is often submerged by standing water at the site during periods of rainfall. During the heavy winter rains, this well is often inaccessible due to standing water approaching one to two feet in depth and several hundred square feet in extent. It is not practicable to sample MW-29 when this area is flooded without potentially impairing the validity of the sample due to accidental influx of surface water into the well. As shown in Figure 1, measurable rain fell on most days during the month that Round 22 sampling occurred, making scheduling of sampling during dry periods infeasible. Since this well was not readily accessible and the presence of surface water around the well head was likely to flow into the well and affect the sample, no sample was collected. This is consistent with standard professional practice for sampling monitoring wells.



The dedicated low-flow pump system at well B1A malfunctioned during Round 24 sampling and could not be sampled despite efforts to fix the problem. During the previous sampling event, the pump performed normally. A replacement pump was immediately ordered, but it had to be manufactured, shipped, and installed before it could be used for sampling. The pump was back in operation prior to the next sampling round in time for the next scheduled sampling event at B1A. This type of equipment malfunction is typical for groundwater sampling programs using dedicated, low-flow pumps.

Finally, EPA cites that one sample container was collected from MW-42 without stabilizing parameters during Round 22. During this sampling event, the field staff inadvertently omitted filling one sample container after purging the well until parameters stabilized. After the omission was realized, the field staff returned to MW-42 and the filled the sample container less than three hours after the well had been originally sampled. This sample container was submitted and analyzed with the rest of the sample containers for that well that day. The procedure requiring low flow purging of the well until parameters stabilize is based on sampling wells that have not been pumped for weeks to months. For this case, where the well was idle for less than three hours, it was not necessary to re-purge the well and that the last sample container filled from MW-42 is representative of the groundwater.

The sampling that has been conducted at the site for Rounds 22, 23, and 24 was conducted in general accordance with the approved work plans and consistent with standard

professional practice. Full compliance with the procedures described by EPA for sampling of EX-3 and MW-29 was not feasible due to the field conditions described, and those problems were remedied as quickly as possible. It was unnecessary to re-purge MW-42 during Round 22 sampling due to the short time between filling sampling sample containers. Therefore, no fines should be assessed for these normal issues that arise frequently in groundwater sampling programs.

EPA Allegation 10: Failure to provide notice timely of sampling

Container Response: The notification of sampling at issue was made on June 11, 2004 and was emailed to EPA on that date as well as communicated verbally. The notification was not able to be signed by the designated project coordinator, Pete Wold, because he was out of town during that period. The intent to notify EPA was clearly in place and Container Properties feels that this fine is excessive and disproportionate. Container Properties is committed to meeting the 10-day notification and has a good track record of meeting this requirement. For this reason the fine should be eliminated or dramatically reduced.

Please do not hesitate to call me on my cell phone (503-504-2272) or email me if you have any questions or other suggestions regarding how we should proceed on the 31st as I will have my blackberry and will check it regularly. I look forward to our meeting and see it as a constructive step toward clearing up much of the confusion and miscommunication which appears to have bogged everyone down despite the good faith efforts made to achieve compliance. Thank you again for your courtesy and cooperation in agreeing to meet with us to try to resolve these matters before the extended deadline for the invoking of dispute resolution.

Sincerely,

David L Blount /jlc

David L. Blount

/jlc
Enclosures

cc: Peter Wold
Gary Dupuy